

PATENT APPLICATION

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES**

In re application of

Docket No: Q77969

Shinobu TANAKA

Appln. No.: 10/695,817

Group Art Unit: 2836

Confirmation No.: 7177

Examiner: Carlos David AMAYA

Filed: October 30, 2003

For: UNQUALIFIED PERSON DRIVING PREVENTION APPARATUS FOR VEHICLE

REPLY BRIEF PURSUANT TO 37 C.F.R. § 41.41

MAIL STOP APPEAL BRIEF - PATENTS

Commissioner for Patents

P.O. Box 1450

Alexandria, VA 22313-1450

Sir:

In accordance with the provisions of 37 C.F.R. § 41.41, Appellant respectfully submits this Reply Brief in response to the Examiner's Answer dated August 13, 2008. Entry of this Reply Brief is respectfully requested.

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STATUS OF CLAIMS

Claims 1-13 and 15-17 are pending in the application, stand rejected, and are all the claims that are the subject of the present appeal. Specifically, claims 1-6, 8-13 and 15-17 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Kito (JP 10082223; “Kito ‘223”) and claim 7 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Kito’ 223 in view of Thorpe (UK 2,395,331). Claim 14 is canceled.

GROUND OF REJECTION TO BE REVIEWED ON APPEAL

A. Whether claims 1-6, 8-13 and 15-17 are unpatentable under 35 U.S.C. § 102(b) as being anticipated by Kito (JP 10082223; “Kito ‘223”); and

B. Whether claim 7 is unpatentable under 35 U.S.C. § 103(a) as being unpatentable over Kito’ 223 in view of Thorpe (UK 2,395,331).

For purposes of this appeal, claims 1 and 8 stand together.

ARGUMENT

At least for the reasons discussed in the Appeal Brief, Appellant submits that the rejections of the claims on appeal are improper, and reversal of each ground of rejection is respectfully requested. Further, Appellant herein rebuts the Examiner's additional comments newly provided in the Examiner's Answer.

Claim Rejections - 35 U.S.C. § 102(b)

The Examiner rejected claims 1-6, 8-13 and 15-17 under § 102(b) as being anticipated by Kito (JP 10082223; as indicated in the Office Action).

As submitted in the Appeal Brief, Appellant submitted the rejection of claims 1-6, 8-13 and 15-17 is improper because the applied reference fails to disclose all the features recited in the claims.

Specifically, Appellants submitted Kito fails to disclose, "a control unit for continuously monitoring an output from the marker detector and taking a predetermined measure to ensure safety when a state occurs in which the qualified person marker is not detected,

wherein the predetermined measure is released when the marker detector again detects the qualified person marker," as recited in claim 1.

In the Response to Arguments section of the Examiner's Answer, the Examiner provides:

[I]f an authorized person enters the vehicle and restarts the engine after the vehicle has been stopped, and the lights and horn are on as a result of the theft attempt, operation of the vehicle must be granted to the qualified person holding the marker detector, since the codes will match (See Fig. 6, step S40). Further, there is nothing in the Kito reference that requires a special step to release

the predetermined measure (stoppage of the engine, operation of headlights and horns) after a theft attempt.

(*Advisory Action*, p. 8),

In response, Appellants submit the claim requires that the “predetermined measure is released when the marker detector again detects the qualified person marker.” As set forth in the Examiner’s rejection, Kito’s predetermined safety measure constitutes an “engine halt” and an operation of the “horn 21 and headlights 22.” (*Examiner’s Answer*, p. 4). Further, as outlined in the Appeal Brief, the “engine halt” is accomplished by disabling the fuel injection equipment. (par. [0030]). Further, Kito only checks to determine if an identification code (from a transponder), the alleged detecting of a qualified person marker, has been received **after** the engine speed has reached an engine speed (NE) in excess of a predetermined rotational frequency (i.e., > 2000 rpm). When the fuel injection equipment is disabled this rotational frequency cannot be reached. As such, in view of the disabling procedure disclosed in Kito, a releasing of the disabled fuel injection equipment 13 by merely repositioning a transponder is not possible. For instance, whereas the Examiner contends “operation of the vehicle must be granted to the qualified person holding the marker detector, since the codes will match” when the engine is restarted, Appellant respectfully submits the disabling of the fuel injection equipment precludes any restarting. Thus, once the fuel injection equipment is disabled, Appellant submits a simple restarting, without some sort of resetting of the fuel injection equipment, cannot again occur.

Additionally, while Kito does not specifically disclose that a “special step” is required, Appellants also note there is no basis for asserting an automatic resetting of the fuel injection equipment is an inherent feature. In fact, the only logical support in Kito regarding this issue is

that a simple restarting cannot occur. Specifically, as set forth above, Kito only checks to determine if an identification code has been received **after** the engine speed has reached an engine speed (NE) in excess of a predetermined rotational frequency (i.e., > 2000 rpm). However, because Kito's disabling function cuts off the fuel injection equipment, once the fuel injection equipment is disabled, the engine speed will no longer reach the predetermined rotational frequency that must be met in order to trigger the checking for the transponder 11. If the intent in Kito were to simply release the "engine halt" by repositioning of the transponder 11, Kito could merely eliminate the rotational frequency condition (rpm > 2000). Accordingly, the Examiner's position is unsupported because criteria for checking an identification code of a transponder 11 prevents a release of the "engine halt" by a mere repositioning of the transponder.

Additionally, the Examiner also provides:

Also, please note that the claim only requires that the predetermined measure is released when the marker detector again detects the qualified person; that is, when step 40 is checking to see whether the codes match, the predetermined measure is released, or in other words, the predetermined measure is in a released state. It is the examiner's position that the claim language does not required that the predetermined measure be released at the time of the of the marker detector again detecting the qualified person marker. As long as the predetermined measure is released (note the claim language does not preclude it being released in a previous step) when the marker again detects.

In response, Appellant submits the Examiner is attempting to rely on a new and an unreasonably broad interpretation of the claim language to support the rejection. However, Appellant submits that the term "is released" is a contemporaneous action as used in this wherein clause. Thus, this action occurs contemporaneously "when" the marker detector again detects the qualified person marker. The claim language does not recite that the predetermined action

was previously released when the marker detector again detects. Rather, a contemporaneous action is recited. For the Examiner's interpretation to bear any weight, the phrase would have to recite, for example, that the predetermined measure is in a released state or was released, in order to support this new interpretation.

Thus, Appellant submits the Examiner's newly proposed claim interpretation is improper for at least this reason.

Finally, in the Response to Arguments, the Examiner contends:

It is respectfully submitted that the Kito device must be released before step S40 in order to function properly. Otherwise, the device would only operate once and would need to be discarded, along with the vehicle, after step 40 determines the codes do not match.

Here, the Examiner is attempting to establish that such a release must be an inherent feature. However, as Appellants noted earlier, this cannot simply occur when Kito's transponder 11 is again placed over a marker detector after a predetermined measure has been taken. As set forth previously, because the fuel injection equipment is disabled (alleged predetermined safety measure) Kito cannot again check to determine if an identification code has been received as this check only occurs **after** the engine speed has reached an engine speed (NE) in excess of a predetermined rotational frequency (i.e., > 2000 rpm).

Moreover, the Examiner's argument that the vehicle would have to be discarded after the safety measure was taken fails to account for the possibility that some other method for resetting the fuel injection equipment exists. To the extent that Kito is directed to cash transportation vehicles, it is entirely reasonable that some additional intervention, aside from merely repositioning the transponder 11, be required to release the fuel injection equipment.

Thus, Appellant submits the Examiner's inherency based argument fails for at least this reason.

CONCLUSION

For the above reasons as well as the reasons set forth in Appeal Brief, Appellant respectfully requests that the Board reverse the Examiner's rejections of all claims on Appeal. An early and favorable decision on the merits of this Appeal is respectfully requested.

Respectfully submitted,



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